NPRM: Authorization. A written instrument issued by the Commission conveying authority to operate, for a specified term, a station in the Public Mobile Services.

Recommendation:

Amend to read as follows:

Authorization. A written instrument issued by the Commission conveying authority to construct and operate, for a specified term, a station in the Public Mobile Services.

Discussion:

NewVector recommends that the above definition include the word "construct" to clarify that carriers' authorizations include both types of authority. The *NPRM* appears to have eliminated the distinction between "construction permits" to build and "licenses" to operate facilities by referencing both types of authority as a single authorization. *See, e.g.*, proposed § 22.142(a) (Construction period). Thus, the definition should be modified accordingly.

NPRM: Partitioned RSA. A Rural Service Area with two or more authorized cellular systems on the same channel block during the five year fill-in period, as a result of contract(s) between the licensee of the first cellular system and the licensee(s) of the subsequent systems. *See* proposed § 22.947(b).

Recommendation:

The definition should be amended to read as follows:

Partitioned cellular market. A Rural Service Area (RSA) with two or more authorized cellular systems on the same channel block as a result of settlements or agreements between the licensee of the first cellular system and the licensee(s) of the subsequent systems. *See* proposed § 22.947(b). Partitioned markets are considered separate cellular markets as defined in proposed § 22.909.

Discussion:

The rights of licensees in partitioned markets should continue to be protected after the five-year fill-in period expires. The proposed definition appears to limit partitioned markets to the fill-in period. Thus, reference to proposed § 22.909 makes clear that partitioned markets remain partitioned after expiration of the fill-in period. Also, the proposed rule should be amended to include a reference to partitioned markets resulting from wireline market settlements.

Subpart B - Application Requirements and Procedures

§ 22.105 Written applications, standard forms, microfiche, magnetic disks.

NPRM: Except for authorizations granted under the emergency conditions set forth in § 308 of the Communications Act . . . the Commission may grant authorizations only upon written application received by it. A separate written application is required for each authorization. . . .

Recommendation:

Delete the sentence reading, "A separate written application is required for each authorization."

Discussion:

The Communications Act requires only that a written application be submitted for Commission authorization. Requiring a separate application for *each* authorization unnecessarily restricts the Commission's flexibility to allow a single application to be filed affecting more than one authorization. For example, applications for Commission consent to the transfer of control or the assignment of authorizations should not require a separate written application for each authorization. The Commission may make the required findings regarding the transferee or assignee's qualifications consistent with proposed Sections 22.132(a) and 22.137(d) from a single application. Eliminating the second sentence of the proposed rule retains Commission flexibility within the rules and reduces its burden.

§ 22.105(g) Magnetic disks.

NPRM: [This section encourages applicants to submit applications on magnetic disks to assist the Commission in maintaining an accurate, technical licensing database.]

Recommendation/Discussion:

NewVector applauds the Commission's proposal to use electronic methods to improve the accuracy of its database. However, NewVector urges the Commission to adopt a filing method that will facilitate public access to the information. Although the proposal to use 3½ disks would improve database accuracy, NewVector respectfully submits that the Commission should connect to a national packet data network (such as Compuserve) so that carriers can examine the filings relating to neighboring systems' cell site locations and channel set information prior to designing their

own systems. Such a system would result in better interference coordination and better relations between neighboring carriers.

§ 22.107 General application requirements.

NPRM: [Proposed § 22.107 requires, that "applications for authorizations or approval of assignments of authorizations" demonstrate, among other things, that the applicant is qualified to hold a Commission license. The proposed rule does not reference applications seeking Commission consent to a transfer of control.]

Recommendation:

Amend, consistent with NewVector's recommendation regarding the definition of "assignment of authorization" in proposed § 22.99. Under Option 1 therein, this section would be amended to read:

In general, applications for authorizations or approval of assignment of authorizations or transfer of control of licensees in the Public Mobile Services must:

Discussion:

See discussion above in connection with the definition of "assignment of authorization" in proposed § 22.99.

§ 22.108 Parties to applications.

NPRM: Each application for an authorization or for approval of an assignment of authorization in the Public Mobile Services must disclose fully the real party or parties in interest to the application. Such disclosure must include:

(a) a list of the applicant's subsidiaries, if any. For the purposes of this section, a subsidiary is any business for which the applicant or any officer, director, stockholder or key manager of the applicant owns 5% or more of the stock, warrants, or debt securities. This list must include a description of each subsidiary's principal business and relationship to the applicant.

(b) a list of the applicant's affiliates, if any. For the purposes of this section, an affiliate is:

(i) any business that holds a 5% or more interest in the applicant; or

(ii) any business in which a 5% or more interest is held by a business that also holds a 5% or more interest in the applicant.

(c) a list of the names, addresses, citizenship and principal business of any person holding 5% or more of each class of stock, warrants, options or debt securities of the applicant, indicating the amount and percentage held, and providing the name, address, citizenship and principal place of business of any person, if other than the holder, for whose benefit such interest is held. If any such persons are related by blood or marriage, the relationship must be disclosed.

Recommendation:

Revise the rule to read:

Each application for an authorization, for approval of an assignment of authorization, or for transfer of control of a licensee in the Public Mobile Services must disclose fully the real party or parties in interest in the application. In the case of an assignment or transfer application, the "applicant" for purposes of this rule is the assignee or transferee. A determination of real party in interest may be made on a case-by-case basis. To facilitate this determination, each application must identify all parties to the application as set forth below. This includes identifying those owning or controlling the applicant as described in paragraph (a) and identifying subsidiaries and affiliates as described in paragraph (b). For each party identified, the information set forth in paragraph (c) must be supplied.

(a) (i) All persons having *de facto* or *de jure* control of the applicant, whether by ownership, contract, or otherwise;

(ii) For corporations, all persons holding 5% or more of any class of stock or other equity securities of the corporation, including preferred stock and nonvoting stock, must be identified; in the event such stock is held for the benefit of others, the beneficial owner(s) must be identified in addition to the holder.

(iii) For partnerships, all partners must be identified.

(iv) For trusts, the trustee(s) and the beneficiaries must be identified; in the case of a revocable trust, the grantor must also be identified.

(v) For individual applicants, joint tenancies, tenancies in common, tenancies by the entireties, joint ventures, and joint applications, each person must be identified.

(vi) For each party who must be identified pursuant to (i)-(v), identification must also be made of all persons who would have an identifiable interest in such party if such party were in turn the applicant.

(b) Subsidiaries and affiliates of the applicant must be identified if such subsidiaries or affiliates are engaged in the provision of Public Mobile Services under the same Subpart of Part 22 as governs the application or have a pending application for same, and if the services provided or applied for by such subsidiaries or affiliates are within the same geographical area as the applicant, as defined by the rules of the service involved. (Geographical area is defined in proposed §§ 22.539(a)-(b) and 22.569(a) for the Paging and Radiotelephone Service and proposed § 22.909 for the Cellular Radiotelephone Service.)

(i) For purposes of this rule, a subsidiary is any entity for which the applicant or any officer, director, stockholder, or key manager of the applicant owns 5% or more of any class of the stock or equity securities.

(ii) For purposes of this section, an affiliate is any entity that holds a 5% or greater interest in the applicant or any entity in which a 5% or greater interest is held by an entity that in turn also holds a 5% or greater interest in the applicant.

(c) For each party that must be identified, the following information must be supplied: name, address, citizenship, and agreements with other identified parties that affect control of the applicant (e.g., voting trusts).

Discussion:

NewVector suggests that the Commission revise its proposed rule to reflect a comprehensive description of the parties who must be identified in an application, based on existing case law and practice, while eliminating unnecessary information.

Recommended subsection (a)(1) ensures that *de facto* control must be disclosed, consistent with the Commission's decisions regarding real parties in interest and *de facto* control. *See Ellis Thompson*, 3 FCC Rcd. 3962 (Com. Car. Bur. 1988), *aff'd*, 4 FCC Rcd. 2599 (1989); *Integrated Communication Systems, Inc.*, 14 FCC 2d 698 (1969).

For corporate applicants, recommended subsection (a)(2) tracks the current and proposed rule, except that the holders of non-equity interests would not have to be identified; the holding of a debt interest, option, or warrant, without more, is not viewed as conferring ownership or control status under the case law, while equity securities, including non-voting and preferred stock, are viewed as ownership interests. *See Wilner & Scheiner*, 103 FCC 2d 511, 513 n.37, 519 (1985), *recon. in part*, 1 FCC Rcd. 12, 13-14 & n.27 (1986); *Data Transmission Co.*, 52 FCC 2d 439, 440-41 (1975); *Belo*

Broadcasting Corp., 49 FCC 2d 181 (1974); *Bay Video, Inc.*, 17 FCC 2d 628 (1969); *Atlantic Coast Broadcasting Corp.*, 22 Rad. Reg. (P&F) 1045 (1962); *M&M Broadcasting Co.*, 26 FCC 2d 35 (1959); *KSOO-TV, Inc.*, 19 Rad. Reg. (P&F) 28 (1959). To the extent a holder of non-equity securities has *de facto* control, however, that party would have to be identified in response to recommended subsection (a)(1).

Recommended subsection (a)(3) would codify the Common Carrier Bureau's policy with respect to the persons who must be disclosed in the case of partnerships. *See Eric Fishman, Esq.*, 65 Rad. Reg. 2d (P&F) 694 (Com. Car. Bur. 1988), *application for review pending*. To the extent this constitutes the Commission's policy, it should be codified. Recommended subsections (a)(4) and (5) set forth the disclosures that would appear to be standard practice in the case of trusts, individual applicants, and various forms of joint applications.

Recommended subsection (b) specifically incorporates the policy from the current rule and case law that affiliates and subsidiaries must be disclosed only if they are engaged in the same service in the same area. The Commission adopted an earlier version of the real party-in-interest disclosure requirement "to prevent an applicant from filing numerous applications in the same geographic area under different names." *Real Party in Interest Disclosure Requirements in the Public Mobile Services (PMRS)*, FCC Public Notice Mimeo 1060 (released November 26, 1982). *See also Eldon L. Hueber d/b/a Cellutech*, 6 FCC Rcd. 736, 738 (Mob. Ser. Div. 1991). Thus, the recommended changes to this subsection codify current policy. A minor change to the definition of subsidiary eliminates reference to non-equity securities for the reasons discussed above.

Recommended subsection (c) states that the information that must be supplied for each identified party. The current rules only state the information that must be supplied for corporate shareholders. The recommended disclosure is similar to that for corporate shareholders at present, except that familial relationships have been omitted consistent with Commission policy of not attributing familial interests, principal business has been omitted as unnecessary, and a requirement has been added for disclosure of agreements affecting control, such as voting trusts. The latter requirement would facilitate real-party-in-interest determinations.

§ 22.115 Content of applications.

§ 22.115(a)(3)

NPRM: (3) FAA notification. Before construction * * * * *

Recommendation:

Amend to add a new subsection 22.115(a)(3)(i), to read as follows:

(i) FAA notification is not required for any construction or alteration of in-building radiation systems which are contained wholly within a building. Licensees of in-building

radiation systems are not responsible for FAA notification requirements relating to the building and are not responsible for compliance with lighting requirements.

Discussion:

The proposed rule change clarifies licensees' responsibility when constructing in-building radiation systems and other antennas located entirely within buildings. Such systems and antennas may be used to provide localized service in buildings receiving poor coverage indoors or to provide microcell service. In such cases, the antennas are completely shielded by the building and present no danger to air navigation. This would eliminate any need for filing FAA notifications because in-building radiation systems do not alter the external appearance or height of the building.

The focus of NewVector's proposed new rule is on antennas located entirely within a building. It is NewVector's position that such antennas are not a hazard to air navigation and should therefore be permitted without prior approval respecting marking and lighting requirements. However, the same analysis applies to "microcell" antennas which do not increase the heights of the buildings on which the antennas are being placed. As cellular systems begin to implement PCS-type technologies, the number of low level antennas will increase substantially. Therefore, NewVector suggest that the Commission consider its proposed rule not only in the context of in-building radiation systems, but also with respect to other microcell technologies.

§ 22.115 Content of Applications.

NPRM: (4) Antenna locations. * * *

NOTE: The FAA has announced that effective October 15, 1992, it will use geographic coordinates based on the 1983 North American Datum (NAD83). Until further notice, however, the FCC will continue to use geographical coordinates based on the 1927 North American Datum (NAD27).

Recommendation/Discussion:

As a result of the FAA's upcoming conversion to NAD83 for the purpose of determining geographical coordinates, carriers will be required to "keep two sets of books" -- one for the FAA NAD83 coordinates and one for the FCC, which will continue to use the NAD27 coordinates. The use of different coordinate databases by the FAA and FCC will result in an additional workload and increase the potential for error for both the carriers and the FCC. Accordingly, NewVector respectfully urges the Commission to expedite its transition to the NAD83 coordinate system.

§ 22.121 Repetitious, inconsistent or conflicting applications.

§ 22.121(a)

NPRM: (a) While an application is pending, any subsequent inconsistent or conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing.

Recommendation:

The following should be added to subsection (a) following the word "filing,": "except as provided in subsection (e)." In addition, new subsection (e) should be added as follows:

(e) This section does not apply to applications for a transfer of control or assignment of license. Applicants will have 60 days from the date of consummation of the transfer of control or assignment of license to amend or dismiss pending application(s) to remove any conflict, inconsistency or repetitiveness.

Discussion:

Subsection (e)(ii) is intended to provide licensees involved in acquisitions flexibility and eliminate the need to request a waiver of this rule in their transfer or assignment application. The proposed change will conserve Commission resources and expedite processing of the assignment or transfer application. Further, it gives the applicant time to select which applications it wishes to remain in the processing line.

§ 22.121(d)

NPRM: [The rule states that licensees whose authorizations have automatically terminated for failure to commence service are precluded from filing an application for another co-channel station in the same area for one year following termination.]

Recommendation/Discussion:

Eliminate the proposed rule. *See* NewVector's detailed discussion in the attached Comments.

§ 22.123 Classification of filings as major or minor.

NPRM: Applications and amendments to applications are classified as major or minor. Categories of major and minor filings are listed in § 309 of the Communications Act of 1934, as amended (47 U.S.C. § 309). In general, a major filing is a request for a Commission action that has the potential to affect parties other than the applicant. Filings are minor if they are not classified as major.

Recommendation:

The introductory paragraph should be amended to read:

Pursuant to § 309 of the Communications Act of 1934, as amended (47 U.S.C. § 309) the following applications are classified as major. All applications not classified herein as major are minor.

Discussion:

The stated rationale for classifying filings is ambiguous and will likely lead to protracted litigation. Every filing has the "potential" to affect another party, in that it will affect the applicant's competitive position vis-a-vis others. Thus, NewVector recommends that this section be all inclusive and establish a clear line of demarcation regarding which applications the Commission will consider major. The proposed revision to the introductory paragraph and suggested changes discussed below should provide carriers sufficient notice regarding applications which are classified as major.

§ 22.123(a)

NPRM: (a) Ownership or control change. Filings are major if they specify a substantial change in beneficial ownership or control (*de facto* or *de jure*), unless such change is involuntary or if the filing merely amends an application to reflect a change in ownership or control that has already been approved by the Commission.

Recommendation:

Amend to read as follows:

(a) Changes in ownership or control. Filings are major if the proposed assignment of authorization or transfer of control does not constitute a *pro forma* assignment or transfer. A filing will be deemed major, and not entitled to *pro forma* consideration, if it specifies a substantial *de facto* or

de jure change in ownership or control, unless such change is involuntary or if the filing amends an application to reflect a change in ownership or control that has previously been approved by the Commission. *See* proposed § 22.137. Determining whether a change is *pro forma* in nature will be made on a case-by-case basis. A change from less than 50% ownership to 50% or more ownership may constitute a major filing, depending on the circumstances; otherwise it is *pro forma*.

Discussion:

NewVector suggests that this subsection be revised to make clear that transfers and assignments that are not *pro forma* are major, and that a determination of this classification is performed on a case-by-case basis. The recommended revision is believed to codify existing practice.

§ 22.123(b)

NPRM:

(b) Developmental. Applications are major if they request a developmental authorization or a regular authorization for facilities operating under a developmental authorization.

Recommendation:

(b) Developmental. A request for developmental authorization will be classified as major if the application would be classified as major under this section if it had been non-developmental. Examples of developmental filings that would be considered major are:

(i) Requests for developmental authority to operate a transmitter for the purpose of developing a new Public Mobile Service or technology not regularly authorized under this part. *See* proposed § 22.409.

(ii) Requests for authority under Subpart D to conduct field strength surveys outside of the requesting party's protected service area or to provide a trial period during which a licensee may conduct tests to determine whether a particular facility or facilities can operate (outside of the requesting party's protected service area) without causing excessive interference to existing services. This paragraph does not apply to requests which are accompanied by written consent from existing co-channel licensees within the relevant coordination distances for the service involved in the directions affected by the developmental operations.

(iii) Requests for developmental authority to operate 43 MHz paging channels and to convert such channels to regular authorization at the end of the developmental period pursuant to § 22.411.

(iv) Requests for developmental authorization of 72-76 MHz fixed transmitters within 16 Kilometers (10 miles) of the antenna of any full service TV station transmitting on TV Channel 4 or 5 and to convert such developmental authority to permanent authorization pursuant to § 22.413.

(v) Requests for developmental authorization of 928-929 MHz and 952-960 MHz fixed transmitters in point-to-multi-point systems at locations that are short-spaced (*e.g.*, do not meet the 113 Kilometer (70 mile) separation requirement of § 22.625) and to convert such developmental authority to a permanent authorization pursuant to § 22.415.

(vi) Requests for developmental authorization of meteor burst systems subject to § 22.417 and to convert such authority to permanent authorization pursuant to § 22.417(b).

Discussion:

In some instances, initial requests for developmental authority and requests to convert such authority to permanent authorization should not be considered major. In the Cellular Radiotelephone Service, the Commission currently grants developmental authority to operate certain non-type accepted equipment as minor applications if they would not otherwise be considered major under proposed § 22.123(e)(2). NewVector recommends the introductory paragraph to this subsection be inserted to provide carriers with notice and the Commission with flexibility in determining which developmental filings will be considered major. Developmental authorizations which are currently considered major (*see* subsections (iii)-(vi) above) are listed for clarity and to make proposed § 22.123 all inclusive consistent with NewVector's recommended amendments to this rule section.

§ 22.123(e) Channel usage.

NPRM:

(e) Channel usage. Filings are major if they would affect channel usage as follows:

(1) Paging and Radiotelephone, Rural Radiotelephone. In the Paging and Radiotelephone and Rural Radiotelephone services, filings are major if they:

* * * * *

Recommendation:

Subsection (e) should be deleted and subsection (e)(1) be designated subsection (e); the remaining subsections of (e) should be renumbered starting with (f).

Discussion:

Combining major filings in the paging, rural radio, cellular, air-ground and offshore services under the heading "channel usage" is confusing. In the Cellular Radiotelephone Service (*see* proposed § 22.123(e)(2)), amending an application to increase a carriers' CGSA is major. However, classifying it as major because it "affects channel usage" has little meaning in the cellular context. Thus, NewVector recommends that subsection (e) be eliminated and each of the listed radio services be designated a separate a new subsection.

§ 22.123(e)(1)(i)(B)

NPRM: (B) extend the service area of an existing station to include area not served by station(s) authorized to the filer on a requested channel;

Recommendation:

Amend to read as follows:

(B) extend the service area of an existing station by more than one mile along any of the cardinal radials to include area not served by station(s) authorized to the filer on a requested channel;

Discussion:

Under the current rules, a reliable service area extension of one mile or less into an area not authorized to an applicant is deemed to be minor. *See* current § 22.23(c)(2). One mile service area extensions do not increase the potential for interference and are necessary to enable licensees to make insignificant changes (*e.g.* correct coordinates of existing authorized facilities) without being subject to public notice.

§ 22.123(e)(1)(i)(E)

NPRM: (E) relocate an existing fixed transmitter.

Recommendation:

Amend to read as follows:

(E) relocate an existing fixed transmitter, except where the relocation would not result in a substantial modification and the relocated facility would continue to operate essentially as authorized. For purposes of this section, a fixed transmitter should be considered to operate essentially as authorized if its coverage area following relocation remains entirely within the previously authorized coverage area.

Discussion:

The relocation of an authorized fixed transmitter that does not increase the potential for interference to other parties should be classified as minor.

§ 22.123(e)(1)(ii)(B)

NPRM: (B) extend the service area of a station on a requested channel to include area that would not have been served by that station as previously proposed in the application;

Recommendation:

Amend to read as follows:

(B) extend the service area of a station on a requested channel by more than one mile along any of the cardinal radials to include area that would not have been served by that station as previously proposed in the application;

Discussion:

See proposed § 22.123(e)(1)(i)(B) discussion.

§ 22.123(e)(1)(ii)(E)

NPRM: (E) change the location of a fixed transmitter from that previously proposed in the application;

Recommendation:

Amend to read as follows:

(E) change the location of a fixed transmitter from that previously proposed in the application, except where the relocation would not result in a substantial modification and the facility as relocated would operate essentially as proposed. For purposes of this section, a fixed transmitter should be considered to operate essential-

ly as proposed if its coverage area following the proposed relocation remains entirely within the previously proposed coverage area.

Discussion:

See proposed § 22.123(e)(1)(i)(E) discussion.

§ 22.123(e)(1)(ii)(E)

NPRM: (E) change the technical proposal substantially from that which was coordinated with other users pursuant to § 22.150.

Recommendation/Discussion:

Change subsection number to "(F)" to correct typographical error.

§ 22.123(e)(2)

— Note: As discussed under proposed § 22.123(e), (e)(2) should be designated (f). However, for clarity, NewVector will continue to reference this section as designated in the *NPRM*.

NPRM: Cellular Radiotelephone. In the Cellular Radiotelephone Service, filings are major if they:

* * *

(B) expand the CGSA of an existing cellular system to include area outside of the cellular market area.

Recommendation:

Amend subsection (B) to read:

(B) expand the CGSA of an existing cellular system to include area outside of the cellular market area. *See* proposed §§ 22.137(c); 22.911(c).

Add subsection (C):

(C) expand the service area boundary extension of an existing cellular system to include area outside of the cellular market area, except in accordance with an agreement pursuant to § 22.912(a).

Discussion:

NewVector has modified proposed subsection B to reference the partial assignment/partition procedures. In addition, NewVector recommends an additional rule consistent with § 22.912(a) governing service area boundary extensions. Service

area boundary extensions beyond the market boundary, which are not agreed to by the adjacent licensee, should be considered major, similar to CGSA extensions beyond the market boundary. *See also* NewVector's recommended revision to § 22.912 consistent with the current § 22.903(d). In the unserved area proceeding, the Commission adopted current § 22.903(d)(2) defining contract extensions (*see* proposed §§ 22.911 and 22.912), and recognized that applications filed with service area boundary extension pursuant to contract were considered permissive (or minor). *See* 47 C.F.R. § 22.9(d)(7)(iii). Further, when the licensees in two adjoining markets operating on the same frequency band agree to service area boundary extensions, the 30 day public notice period is not necessary. Thus, subsection (B) should be modified to continue to classify service area boundary extensions made pursuant to an agreement with the adjacent licensee as minor. Furthermore, NewVector has deleted the use of the term "contract" and replaced it with the term "agreement" to allow for less formal understandings between adjacent licensees.

§ 22.125 Applications for special temporary authorizations.

NPRM: Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. A request received less than 10 days prior to the desired date of operation may be given expedited consideration * * *

Recommendation:

Amend to read as follows:

Such requests should be filed at least 10 days prior to the date of proposed operation. Where an extension is sought, the request must be filed on or before the expiration date of the existing STA. A request filed less than 10 days prior to the desired date of operation may be given expedited consideration * * *

Discussion:

The proposed rule requires that a request be received by the Commission at least 10 days prior to the date of proposed operation. Under the proposed rule, the phrase "received by the Commission" is ambiguous. It is unclear whether the phrase refers to receipt in Pittsburgh, PA or receipt in Washington, DC. The proposed rule should be rewritten to replace all references to "received" with "filed."

Further, STAs are often filed while licensees are awaiting grant of applications for permanent facilities. As this grant may occur in the 10 day period prior to an STA's expiration, it is a waste of Commission and industry resources to require extension requests to be filed 10 days prior to the STA's expiration.

§ 22.125(b)

NPRM: [The proposed rule sets forth procedures for requesting special temporary authority.]

Recommendation:

Amend to read as follows:

(b) Emergency Operation. During a period of emergency in which normal communications facilities are disrupted as a result of hurricane, flood, earthquake or disaster, a licensee in the Public Mobile Services may implement temporary measures to restore normal communications without prior Commission approval under the following conditions:

(1) Paging and Radiotelephone Service. Licensees in the Paging and Radiotelephone Service may replace, relocate, or modify existing facilities pursuant to paragraph (b) provided the service and interfering contours of these temporary measures are contained wholly within previously authorized contours. Any necessary FAA clearances must be obtained prior to the construction of facilities pursuant to this section.

(2) Cellular Radiotelephone Service. Licensees in the Cellular Radiotelephone Service may implement temporary measures pursuant to paragraph (b) provided that all resulting contours are contained within the previously authorized CGSA or, in markets where the five year fill-in period has not expired, the cellular market boundary. Any necessary FAA clearances must be obtained prior to the construction of facilities pursuant to this section.

(3) Report required. Emergency operations may continue pursuant to this section for up to 30 days. Once normal communications have been restored, licensees must provide the Commission with a report detailing the temporary measures used to restore communications.

(4) Priority Access During Emergency Operations. During a period of emergency operation as described in (a), carriers may provide priority access to emergency service entities (such as police and fire).

(c) Limit on STA term * * *

Discussion:

Licensees should be given additional flexibility to restore normal communications in emergency situations. NewVector proposes modification to the proposed rule to provide additional flexibility consistent with proposed § 22.163.

§ 22.133 Random selection process.

NPRM: This section states that certain types of mutually- exclusive applications are included in a random selection process. It also eliminates the Commission's existing procedures regarding comparative hearings.

Recommendation/Discussion:

Adopt as proposed. In light of the fact that the Commission's comparative hearing procedures have been virtually unused, NewVector supports the deletion of these procedures from its rules.

§ 22.135 Settlement conference.

NPRM:

In any contested application proceeding, the Commission, in its discretion, may direct the parties and/or their attorneys to appear before it for a conference.

Recommendation:

After the proposed section, add the following sentence: "A Commission attorney will participate in all settlement conferences."

Discussion:

Participation by a Commission attorney in settlement conference proceedings will assist all parties in focusing on the relevant issues and will therefore expedite a resolution.

§ 22.137 Assignment of authorization; transfer of control.

NPRM:

Authorizations in the Public Mobile Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or by transfer of control of a corporate licensee holding such authorizations, only upon approval by the Commission. The assignee is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions authorization to be assigned.

Recommendation:

Amend introductory paragraph to read:

Prior Commission consent is required for assignment of authorizations and transfers of control of licensees and permittees, including *de facto* and *de jure* changes in ownership and control. Whether a given transaction constitutes a change in ownership and control requiring consent is determined on a case-by-case basis, considering all relevant facts and circumstances. A change from less than 50% ownership to 50% or greater ownership will always be deemed a change in ownership or control requiring prior Commission consent. Upon consummation of an assignment or transfer, the licensee as it is then constituted is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions of the authorization that was the subject of the assignment or transfer.

Discussion:

The recommended change makes clear that both *de facto* and *de jure* changes in ownership and control require Commission consent and advises licensees that a case-by-case determination will be made as to whether a given transaction requires consent, consistent with current § 22.39(a)(2). It also incorporates the policy set forth current § 22.39(a)(1) that changes from minority ownership to 50% or greater ownership will always be deemed changes in control requiring Commission consent. Other minor revisions were incorporated in the recommendation, including the use of the defined terms "assignment of authorization" and "transfer of control" in lieu of lengthier phrases. *See also* comments on definition of "assignment of authorization" in § 22.99.

§ 22.137(a)

NPRM:

(a) Application required. The assignor must file an application for approval of assignment or transfer of control (FCC Form 490). In the case of involuntary assignment, such application must be filed within 30 days after the event causing the assignment. The assignee must file a report qualifying it as a common carrier (FCC

Form 430) unless an accurate report is already on file with the Commission.

Recommendation:

Amend to read:

(a) Application required. The assignor or transferor and assignee or transferee must jointly file an application for consent to assignment of authorization or transfer of control on FCC Form 490. In the case of involuntary assignment, such application must be filed within 30 days after the event causing the assignment.

Discussion:

The assignor is not the only applicant in a Form 490 application; the assignor and assignee (or transferor and transferee) are both applicants. Furthermore, as discussed in the body of NewVector's Comments, because the assignee or transferee must demonstrate its qualifications and disclose real parties in interest pursuant to other rules, there is no need to file a Form 430 qualification report.

§ 22.137(b)

NPRM: Notification of completion. Assignments must be completed within 60 days of FCC approval. * * *

Recommendation:

Amend to specify 90 days.

Discussion:

The time for consummating an assignment of license or transfer of control should be extended to 90 days. Extending the consummation period will avoid unnecessary letter filings and conserve Commission resources. In many instances, Commission consent to the transfer of control or assignment of authorization takes approximately two weeks to appear on public notice. Within thirty days thereafter, the Commission may set aside the grant on reconsideration. Thus, "finality" is not reached for approximately 45 days after grant. The proposed 60-day period leaves the parties approximately 15 days within which to consummate or file a letter requesting an extension of time. Allowing 90 days for consummation gives the parties approximately 45 days after a grant becomes final to consummate.

§ 22.137(c)(2)

NPRM: (2) Partial assignments must be completed within 60 days of FCC approval. * * *

Recommendation:

Amend to specify 90 days.

Discussion:

See preceding comment.

§ 22.137(e) (Proposed new subsection)

NPRM: Not present (new subsection)

Recommendation:

Add new subsection (e) at the end of § 22.137 to read:

(e) *Pro forma* assignments and transfers of control.

Pro forma assignments and transfers of control shall be governed by this rule section. A single application (FCC Form 490) may be filed listing multiple licensees and station call signs for all *pro forma* transfers of control and assignments of Part 22 authorizations. Applications must be accompanied by the appropriate fee multiple for each call sign covered by the application and include extra copies for association with each station file. Applications (FCC Form 490) filed pursuant to this section are deemed granted upon filing, subject to Commission reconsideration (*see* proposed § 1.108) and the parties to the application may consummate upon filing provided that:

(i) there is (a) no substantial change in ownership or control, and (b) the Commission has previously found the controlling party or parties to be qualified to hold a Commission authorization.

Discussion:

See discussion in the body of NewVector's Comments.

§ 22.142 Commencement of service; notification requirement.

NPRM: (b) Notification requirement. Licensees must notify the Commission (FCC Form 489) of commencement of service to the public. The notification must be mailed no later than 15 days after service begins.

Recommendation/Discussion:

Adopt without change. The proposed rule provides carriers with needed flexibility. It will allow carriers to provide service to the public without delay, yet ensure that the Commission receives notification on a timely basis.

§ 22.143(e) Construction prior to grant of application.

NPRM: [This section enables applicants to engage in pre-authorization construction under certain circumstances.]

Recommendation/Discussion:

Adopt as proposed. NewVector strongly supports pre-authorization construction as it affords carriers flexibility in building and expanding their systems.

§ 22.144 Termination of authorizations

NPRM: [The proposed section lists five ways, other than revocation, that a Public Mobile Services authorization is terminated. With one exception, authorizations automatically terminate without specific Commission action.]

Recommendation/Discussion:

NewVector supports adoption of the rule. *See* detailed discussion in NewVector's attached Comments.

§ 22.159 Computation of average terrain elevation.

NPRM: Average terrain elevation must be calculated by computer. In cases of dispute, average terrain elevation determinations can also be done manually, if the results differ significantly from the computer derived averages.

Recommendation:

Average terrain elevation must be calculated by computer. However, average terrain elevation determinations can also be done manually if the results differ significantly from the computer derived averages.

Discussion:

Adopt rule as modified. NewVector supports the proposed rule. NewVector emphasizes that manual calculation is extremely labor intensive and therefore should not be mandatory. However, NewVector notes that in extremely rugged mountainous regions, terrain between 0 to 2 miles and greater than 10 miles, may greatly affect the accuracy of the Commission's formula for service contours, sometimes rendering it totally inaccurate. Therefore, licensees should be able to calculate average terrain data manually when it results in a more accurate depiction of coverage. The minor revision deleting the phrase "in cases of dispute" is meant to clarify that the licensee alone has discretion to manually calculate data.

§ 22.163 Minor modifications to existing stations.

§ 22.165 Additional transmitters for existing systems.

NPRM:

[The *NPRM* proposes two rules (§§ 22.163 and 22.165) to govern permissive changes or minor modifications for the Public Mobile Service. The two proposed rules are largely duplicative and are discussed below in the context of combining them into a single rule.]

Proposed § 22.163(b) states that licensees may not make modifications to existing stations without prior Commission approval if the facilities to be modified are located between line A or line C and the U.S./Canadian border.

Recommendation.

Proposed §§ 22.163 and 22.165 should be combined and retitled as follows:

§ 22.163 Minor modifications and permissive changes to existing systems.

(a) Licensees may make modifications to existing facilities (including relocations) and add additional transmitters at different locations subject to the applicable rules governing the respective

services governed by this Part without obtaining prior Commission approval, provided:

(1) Classification as minor. The modifications or the addition of a transmitter must be minor. Modifications to a station are minor if an application filed solely for the purpose of obtaining authorization for such modifications would be classified as minor in accordance with § 22.123.

(2) Locations near Canadian Border. The facilities to be modified or additional transmitters must not be located between Line A or Line C and the U.S./Canadian border. This subsection does not apply to facilities or transmitters authorized in the Cellular Radiotelephone Service.

(3) Antenna structure clearance required. For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Federal Aviation Administration office (on FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, FOB Antenna Survey Branch. Where applicable, FAA and ASB clearance must be obtained prior to making any modification or constructing any transmitter.

(i) FAA notification is not required for any construction or alteration of antennas which are contained wholly within a building. *See* proposed § 22.115(a).

(4) Provision of information upon request. Licensees must supply administrative or technical information concerning the subject facilities upon request by the Commission.

(b) Licensees making minor modifications or adding transmitters pursuant to this section must notify the Commission (on FCC Form 489). The notification must be mailed no later than 15 days after service begins. All minor modifications and additional transmitters will receive interference protection.

Discussion:

Based on NewVector's proposed revision to § 22.123 classifying filings as major or minor, it appears that proposed §§ 22.163 and 22.165 can be combined into a single section. If the Commission adopts NewVector's recommendations regarding these rule sections, a licensee proposing to make changes to its existing system (modifying or adding additional transmitters) would first determine if the proposed changes would be classified as major under proposed § 22.123. If the change was not classified as major, the licensee would then move to proposed § 22.163 for any additional requirements

applicable to minor modifications subject to the rules governing the particular mobile service. NewVector believes that these changes not only simplify the rules governing major and minor, but also gives carriers an objective standard for classifying filings.

For the reasons stated in its Comments, NewVector recommends that the Commission require licensees to file FCC Forms 489 to protect their facilities.

As to facilities located between Line A and the U.S./Canadian border, NewVector believes that the addition of a new transmitter or the modification or relocation of an existing transmitter should be considered a minor modification that does not require prior Commission approval as long as the service and interference contours of the new/relocated/modified transmitter are entirely encompassed by the service and interference contours of existing co-channel stations licensed to the applicant. However, NewVector acknowledges that facilities between Line A and the U.S./Canadian border are subject to treaty, and that the Commission therefore cannot classify such facilities as minor without Canadian agreement. NewVector respectfully urges the Commission to coordinate with Canada on an expedited basis so that carriers may license facilities above Line A without prior Commission approval as long as the facilities will not cause interference to Canadian stations. In this regard, NewVector submits that, in notifying the Commission of a new/modified facility above Line A, a carrier could be required to submit an interference analysis for the proposed facility to demonstrate that it will meet the current Canadian -139.5 dBw requirement.

§ 22.167 Applications for assigned but unused channels.

NPRM:

Section adopts spectrum finder's procedures.

Recommendation/Discussion:

NewVector has several concerns regarding the practical effects of the proposed "finder's preference" procedures, which are discussed in detail in its Comments. In addition, the Commission should make clear that a "finder's application" must be consistent with the rules governing the particular service involved. Specifically, the Commission should not entertain applications for a portion of a cellular frequency block based on a claim that the licensee is not utilizing specific channels within its authorized frequency block. NewVector believes that this is implicit in the Commission's proposal, given the block-by-block, rather than channel-by-channel cellular licensing scheme; unless this is made explicit, the Commission could find itself swamped with finder's applications for cellular channels that are authorized but not used at a particular time (especially as digital technologies are implemented) for demand or coordination reasons.

Subpart C - Operational and Technical Requirements

§ 22.313 Station identification.

NPRM:

(c) . . . Station identification comprises transmission of the call sign assigned by the Commission to the station, however, the following may be used in lieu of the call sign:

(3) for stations in the Paging and Radiotelephone Service, a call sign assigned to another station within the same system.

Recommendation/Discussion:

Adopt rule as proposed. Adoption of the proposed rule would eliminate an existing procedure whereby applicants proposing wide area simultaneous transmissions involving facilities licensed under various call signs must first file a Form 489 requesting waiver of the station identification rule. Processing of waiver requests is a drain on Commission resources and is an unnecessary burden to licensees, who must wait a substantial period of time for a waiver prior to providing the wide area simultaneous transmissions.

§ 22.323 Incidental communications services.

NPRM: (d) the licensee notifies the Commission by letter before providing the incidental services. . . .

Recommendation:

Delete subsection (d).

Discussion:

Requiring notification of incidental services ignores marketplace realities for such services and serves no practical purpose. All such fixed services are clearly incidental to carriers' primary service — mobile communications. Until carriers begin building their facilities for something other than mobile service, the Commission should assume that fixed services are incidental. Further, in certain instances, it is impossible for carriers to comply with the notification requirement. There are fixed devices on the market which permit consumers to purchase and begin service without the carriers' knowledge. It is not in the public interest for the consumer to wait for service until the order is communicated to the carriers' legal department and the necessary notification letter prepared and filed. Moreover, NewVector proposes a deletion of the notification requirement as the status of fixed facilities changes on a routine basis. By